

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYA ALI HYATT,

Defendant-Appellant.

FOR PUBLICATION

July 21, 2016

No. 325741

Genesee Circuit Court

LC No. 13-032654-FC

Advance Sheets Version

Before: SHAPIRO, P.J., and MARKEY, METER, BECKERING, STEPHENS, M. J. KELLY, and RIORDAN, JJ.

METER, J. (*concurring in part and dissenting in part*).

I concur in Parts I, II, and III of the majority opinion. I would not, however, vacate defendant Kenya Hyatt’s sentence and remand this case for resentencing.

The *Milbourn*¹ concept of proportionality provides an adequate framework for review of sentences such as the one imposed in the present case. The sentencing court explicitly mentioned and adhered to the principle of proportionality. In addition, the sentencing court, as noted by the panel in *People v Perkins*, 314 Mich App 140, 179; 885 NW2d 900 (2016), explicitly took the *Miller* factors into consideration.

The majority opinion focuses on the following statement by a psychologist regarding defendant Hyatt’s capacity for change: “[I]f I were to predict in five years, it would not be possible.”² This statement, however, was merely one aspect of the testimony and other evidence appropriately taken into consideration by the sentencing court. In addition, while the court did not explicitly use the term “rare” as employed in *Miller v Alabama*, 567 US __; 132 S Ct 2455, 2469; 183 L Ed 2d 407 (2012), and *Montgomery v Louisiana*, 577 US __; 136 S Ct 718, 733; 193 L Ed 2d (2016), the record makes clear that the court applied the applicable concepts from *Miller* in deciding that a sentence of life without parole was appropriate despite defendant Hyatt’s status as a juvenile.

¹ *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

² The psychologist further stated that she simply could not predict whether defendant Hyatt would change.

Moreover, the pertinent circumstances—including that defendant Hyatt was the actual shooter, had a history of assaultive behavior, appeared to a counselor to have no conscience, showed no remorse or concern over the crimes, was “disconnected from societal morals and mores,” had “serious maladjustment,” and was 17 years old at the time of the offenses—clearly supported the sentence. See, generally, *Miller*, 567 US at ____; 132 S Ct at 2467-2468. The sentencing court specifically noted that defendant Hyatt’s age was not a mitigating factor in this particular case, and the court adequately set forth evidence showing that defendant Hyatt’s potential for rehabilitation was low. In *Miller, id.* at ____; 132 S Ct at 2468, the Supreme Court stated that a mandatory sentence of life without parole “disregards the possibility of rehabilitation even when the circumstances most suggest it.” Here, the circumstances did not “most suggest it.”

I find no violation of the principle of proportionality and no need to remand this case. The sentencing procedure was constitutional and the sentence was proportionate to the circumstances surrounding the offense and the offender.

I would affirm the sentence.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Michael J. Riordan